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February 10, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: MM Docket 00-10
MM Docket 99-292
RM-9260

Dear Ms. Salas:

On behalf of Paging Systems, Inc., there is transmitted herewith and filed, an original and four copies of its Comments with Regard to Establishment of a Class A Television Service in the above-referenced proceeding.

Should there be any questions concerning this matter, kindly communicate directly with the undersigned counsel.

Very truly yours,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By: 
Bruce A. Eisen

Enclosure

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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IN THE MATTER OF

Establishment of a Class A Television Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Commission

COMMENTS OF PAGING SYSTEMS, INC.
WITH REGARD TO ESTABLISHMENT OF A
CLASS A TELEVISION SERVICE

Paging Systems, Inc. ("WLMF-LP"), by its attorneys, hereby requests the Commission to accept its Comments in the above-captioned rulemaking proceeding which addresses the Establishment of a Class A Television Service. In support thereof, the following is shown:

Paging Systems, Inc. is the licensee of low power television station WLMF-LP at Miami, Florida. It has operated on Channel 13 since March 30, 1995, and during that period it has broadcast a program format which is unique in southern Florida.

In April, 1997, when the Commission released its Sixth Report and Order in MM Docket No. 87-268, FCC 97-115, thereby adopting a digital television Table of Allotments, WLMF-LP was forced to file a displacement application because of a potential conflict with Television Station WPEC(TV), Channel 12, at West Palm Beach, Florida. WPEC had been allotted DTV Channel 13, and WLMF-LP had determined that WPEC's DTV operation would have received predicted interference to such an extent that the present low power television Channel 13 would

have been displaced. WLMF-LP therefore filed an application to specify operation on Channel 53 from a new transmitter site so that it would be able to continue to operate its programming service. No additional alternative channel in south Florida was available. WLMF-LP also filed comments in the Commission's Notice of Proposed Rulemaking to reallocate television Channels 60-69 in DT Docket No. 97-157. In its comments, WLMF-LP noted that the proposed reallocation would threaten its continued viability and that, therefore, Channels 60-69 should remain allocated for broadcast use. It also argued that many displaced from lower channels might have to seek an assignment in the Channel 60-69 band during the DTV transition where all full power stations were authorized to operate on two channels. Ultimately, WLMF-LP received no relief from the Commission in the context of that particular rulemaking.

Now, the Commission has released its Order and Notice of Proposed Rulemaking ("NPRM") which is intended to implement the Community Broadcasters Protection Act of 1999. 47 U.S.C. §336(f) ("CBPA"). As the Commission recites, Congress found that the future of low-power television is uncertain, and because LPTV stations have had secondary regulatory status, they can be displaced by full service stations that seek to expand their own service areas, or by new full service stations seeking to enter the same market. See, NPRM, para. 5. The CBPA, however, requires that absent a material deficiency in a licensee's certification of eligibility, the Commission shall grant the certification of eligibility to apply for Class A status. This means that a qualifying LPTV facility will be able to achieve a new prominence, for the statute requires the Commission to preserve the service areas of low-power television licensees pending the final resolution of a Class A application.

WLMF-LP has, in fact, submitted to the Commission on January 28, 2000, a Statement for Eligibility for Class A Low-Power Television Station Status. Nevertheless, as the NPRM states, there are three certifying criteria which must be met prior to the 90-day period ending November 28, 1999 before a facility can be granted Class A status. The licensee must have:

- (a) broadcast a minimum of 18 hours per day;
- (b) broadcast an average of three or more hours per week of programming produced within the market area served by the station or by commonly-controlled stations;
- (c) operated its station in full compliance with the regulations applicable to low-power television stations.

Moreover, the NPRM, at paragraph 24, recites that only LPTV stations operating on the “core” channels 2-51 are eligible for Class A status. This possible preclusion was what triggered WLMF-LP’s need to file comments in the aforementioned rulemaking to ensure that Channels 60-69 be reserved for broadcast use. Unless some relief is forthcoming, it faces potential extinction. The NPRM does note, however, that the CBPA provides at Section (f)(6)(A) that the Commission shall allow LPTV stations assigned to and temporarily operating between Channels 52 and 69, the opportunity to meet the qualification requirements for a Class A license.

WLMF-LP urges the Commission to strongly consider the alternative eligibility criteria mandated by Section (f)(2)(B) of the CBPA. The Commission should also allow “non-core” licensees already subjected to DTV displacement to obtain Class A status at least until the transition period included within the Sixth Report and Order has expired. Any other conclusion would prove a hardship to stations like WLMF-LP which has struggled to provide “niche” programming to its service area for many years.

WLMF-LP had no recourse but to file for Channel 53 and should not be arbitrarily deprived of a Class A protected status because no suitable core channel could be found for assignment. Further, WLMF-LP broadcasts a minimum of 18 hours per day and has operated in full compliance with all regulations applicable to low power television stations as required by the certification criteria. It had not broadcast an average of 3 hours or more per week of programming produced within the market area served by the station. However, it is respectfully submitted that this requirement should not bar WLMF-LP from Class A status if for no other reason that its unique programming virtually precludes locally produced programming.

Prior to the enactment of the CBPA, WLFM-LP had no knowledge that the requirement of local programming production would be needed in order to achieve Class A status. The CBPA was in large measure the product of lobbying from the Community Broadcasters Association, an organization with which WLFM-LP is not affiliated. It seems unfair in the extreme to suddenly and without reasonable warning impose requirements on the displaced LPTV licensees who have done their utmost to serve the public interest in their operations despite the many hardships which they have had to overcome. Indeed, the requirement for local program production may be illegal. To the extent that the CBPA requires a level of locally produced programming, it retroactively changes the legal consequences of the present WLMF-LP programming and therefore represents an ex post facto law prohibited by Article 1, Section 10 of the United States Constitution. In point of fact, WLFM-LP will be punished for providing exemplary programming which, because the licensee lacks omniscience, has placed it outside the Class A certification status.

Annexed hereto is the WLMF-LP Program Guide. It reflects the station's mission is to provide television programming to enrich and enhance knowledge of the world. Indeed, WLMF-LP is the sole provider of this programming in south Florida. The programming consists of over 40 different news broadcasts from around the world, broadcasting either live or through taped delay, transmitted by satellite without any modification and without commercial interruption. Hence, the very nature and value of this programming to the service area is non-local.

WLMF-LP operates an outlet to allow its service area to view the rest of the world as that world perceives itself. This places WLMF-LP into an important community role within the service area. The station provides a "life line" for local people from the diverse countries that are presented during its broadcast week. For many of these viewers, WLMF-LP is the sole source of up to the minute news and information concerning their native countries. No other communications entity in south Florida provides such service. In a large sense, based upon the testimonials that have been received, these viewers consider WLMF-LP programming to be "local" since it addresses their very specific problems and needs. This local significance would be destroyed utterly if the continuous 24 hours of broadcasting presently carried were damaged by an interfering station or by the necessary implementation of a secondary format. In short, if WLMF-LP were forced to institute the 3 hours of local programming required for Class A status, a major part of the broadcast day would be lost to a cross-section of viewers.

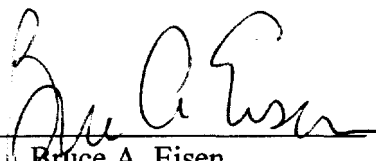
Depriving WLMF-LP of Class A status also has far-reaching First Amendment repercussions. The station would have been forced to delete important content programming directed at local viewers. The First Amendment, of course, presumes freedom of speech, for "Congress shall make no law . . . abridging the freedom of speech or of the press". U.S. Const. Amend. I. Hence, all present instruments of communication must be free from governmental prohibition. See Kovacs v. Cooper, 336 U.S. 77, 102 (1949). If WLMF-LP is not granted Class A status, it faces the prospect of demise and the community will lose its valuable non-commercial programming.

The Commission has scheduled the auction of non-core television channels between Channels 52-59 at such time as there results an 80 percent penetration of digital television. Various projections place this penetration schedule to the year 2006. However, many familiar with equipment roll-outs and actual implementation believe that the projection is highly optimistic and that DTV will not reach that level of use for at least 10-12 years. If WLMF-LP is "kept in limbo" during this period of time, the need to replenish programming with high quality offerings and the further need to make capital expenditures to upgrade the facility will be adversely impacted. The Commission has noted this danger in its NPRM. On the other hand, if WLMF-LP were awarded Class A status, the Commission would be protecting Channel 53 from further threats of displacement that may be unforeseen at this time, a matter of prime importance, for there is presently no clear indication as when any core group channels will become available in south Florida.

In light of the foregoing, the Commission is requested to review these comments and to incorporate them in a report and order which allows stations like WLMF-LP to achieve Class A status notwithstanding its potential "non-core" operation on Channel 53 and need for "non-local" program production.

Respectfully submitted,

PAGING SYSTEMS, INC.

By: 
Bruce A. Eisen
Its Attorney

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February 10, 2000

WLMF-LP Program Guide

DECEMBER 1999 - EFFECTIVE DECEMBER 1, 1999	CENTRAL TIME	TELSTAR (T5) 97° W, V
Add One Hour for Eastern Time; Subtract One Hour for Mountain Time, Two Hours for Pacific Time.		

Saturday

0000 Jordan (JRTV): (Satellite)
 0020 SCOLA SCHEDULE
 0030 UZBEKISTAN (Tape)
 0100 BULGARIA (B-1): (Tape)
 0130 LATVIA TW: (Tape)
 0230 SLOVENIA: (Tape)
 0300 GERMANY (Journal): (Satellite)
 0330 KAZAKHSTAN (RIKA TV): (Tape)
 0400 TAIWAN (cts, tty, ctv, ftv): (Tape)
 0430 CHILE (24 HORAS): (Tape)
 0500 MYANMAR (MT & R): (Tape)
 0700 MEXICO (ECO): (Satellite)
 0730 FRANCE (Journal): (Satellite)
 0800 SPAIN (Telediario 1): (Satellite)
 0835 ESTONIA (ETV): (Tape)
 0900 POLAND (TV3): (Tape)
 1000 TAIWAN (CTS,TTY,CTV,FTV):Satellite
 1030 BASQUE (Euskal Telebista)
 1100 CZECH REPUBLIC: (TV Nova): (Tape)
 1130 DUBAI (EDTV): (Tape)
 1200 SCOLA Schedule
 1215 ISRAEL (Mabbat): (Tape)
 1300 GERMANY (Journal): (Satellite)
 1330 LITHUANIA - Panorama
 1400 CHINA (Beijing)(English News):(Sat.)
 1430 CHINA (Beijing)(Sat.)
 1500 GALICIA (TVG): (Tape)
 1530 CHINA (Tai Yuan): (Tape)
 1630 HUNGARY: (Tape)
 1700 MOLDOVA (Moldova Intl): (Tape)
 1730 ROMANIA (Tape)
 1830 CATALUNYA (TV3): (Satellite)
 1900 CROATIA (Dnevnik) (Hrvatska Televizija): (Satellite)
 2000 ITALY (RAI 1,2): (Satellite)
 2030 FRANCE (France 2): (Satellite)
 2100 ICELAND (Iceland Today): (Tape)
 2130 QUEBEC (TVA) Satellite
 2200 KOREA (The Asia Network): (Satellite)
 * 2230 RUSSIA (ORT): (Tape-Repeat)
 2250 SCOLA SCHEDULE
 2300 GREECE (Antenna1 TV): (Satellite)

* Changed

Sunday

0000 CHINA (Tai Yuan -- CYRTV): (Tape)
 0100 IRAN: (Tape)
 0130 BULGARIA (B-1): (Tape)
 * 0200 JORDAN (JRTV): (Satellite)
 0240 ESTONIA (ETV): (Tape)
 0330 SLOVENIA (STV): (Tape)
 0400 CZECH REPUBLIC: (TV Nova):(Tape)
 0430 MYANMAR (MT&R): (Tape)
 0600 CHILE (24 HORAS): (Tape)
 0630 KAZAKHSTAN (RIKA TV): (Tape)
 0700 MEXICO (ECO): (Satellite)
 0730 FRANCE (France 2): (Satellite)
 0800 SPAIN (TELEDIARIO 1): (Satellite)
 0835 SWEDEN (Channel 2): (Tape)
 0900 TURKEY (ATV): (Tape)
 1000 TAIWAN (CTS,TTY,CTV,FTV): (Satellite)
 1030 ROMANIA (TVR - Actualitati): (Tape)
 1100 SOUTH AFRICA (SABC): (Tape)
 1200 DUBAI, UAE (EDTV) (World Arabic News): (Satellite)
 1230 RUSSIA (ORT): (Tape -- Repeat)
 1300 GERMANY (Journal): (Satellite)
 1400 CHINA (Beijing) (English News) (Sat)
 1430 CHINA (Beijing): (Satellite)
 1500 ISRAEL (Mabbat): (Tape)
 1530 ARMENIA (Storaket Internets): (Tape)
 1600 BASQUE (Euskal Telebista)
 1630 POLAND (Oto Polska): (Tape)
 1700 CATALUNYA (TV3): (Satellite)
 1730 GALICIA (TVG): (Tape)
 1800 FRANCE (France 2, Sunday)
 1830 ITALY (RAI 1,2): (Satellite)
 1900 CROATIA (Dnevnik) (Hrvatska Televizija): (Satellite)
 2000 HUNGARY (NBN): (Tape)
 2100 ICELAND (Iceland Today): (Tape)
 2145 NUNTII LATINI (YLE Radio Finland Latin News): (Tape)
 2150 SCOLA Schedule
 2200 KOREA (The Asia Network): (Satellite)
 2230 QUEBEC (TVA): (Satellite)
 2300 GREECE (Antenna1 TV): (Satellite)

* Changed

Audio 1 - Primary Program Left Out	SCOLA's Web site is: http://www.scola.org	E-Mail via: scola@scola.org
Audio 2 - World Radio Network Right Out	Mirrored at: http://lingnet.army.mil	or scola@crlighton.edu

DECEMBER 1999 - EFFECTIVE DECEMBER 1, 1999 CENTRAL TIME TELSTAR (T5) 97°W, V
Add One Hour for Eastern Time; Subtract One Hour for Mountain Time, Two Hours for Pacific Time.

0000 Jordan (JRTV) T,Th: (Satellite)
 0020 SCOLA SCHEDULE
 0030 PHILIPPINES: (Morning News) (Satellite)
 0130 BULGARIA (B-1): (Tape)
 0200 RUSSIA (ORT): (Repeat)
 0235 TAIWAN (CTS,TTY,CTV, FTV): (Tape)
 0300 SWEDEN (Channel 2): (Tape) M, W, F; ESTONIA (ETV): (Tape) T,Th
 0330 OMAHA, NE (USA) WOWT-TV, Channel 6 (Tape)
 0400 ROMANIA (TVR - Actualitati): (Tape)
 0430 CZECH REPUBLIC (TV-Nova): (Tape)
 0500 CHILE (24 HORAS): (Tape)
 0530 COLOMBIA (SUR): (Satellite) M, W, F ; PERU (SUR): (Satellite) T,Th
 0630 BRAZIL (TV Bandeirantes): (Tape)
 0700 MEXICO (ECO): (Satellite)
 0730 FRANCE (FRANCE 2): (Repeat) Tape)
 0800 SPAIN (TELEDIARIO 1): (Satellite)
 0845 ISRAEL (Mabbat): (Tape)
 0915 SCOLA SCHEDULE
 0930 LITHUANIA (Panorama): (Tape)
 1000 TURKEY (ATV): (Tape)
 1030 DUBAI, UAE (EDTV): Arabic News (Sat)
 1100 JAPAN (Fujisankel): (Satellite)
 1145 BASQUE (Euskal Telebista): (Satellite)
 1225 SCOLA SCHEDULE
 1230 CHINA (English News): Satellite)
 1300 GERMANY (Deutsche Welle): (Satellite)
 1400 RUSSIA (ORT): (Tape))
 1500 LATVIA (Panorama): (Tape)
 1530 ARGENTINA (SUR): (Satellite)
 1630 CATALUNYA (TV3): (Satellite) M, W, F; GALICIA (TVG): (Satellite) T, Th
 1700 POLAND (TV3): (Tape)
 1730 SLOVENIA (STV): (Tape)
 1800 HUNGARY (NBN): (Tape)
 1830 QUEBEC (TVA): (Satellite)
 1900 CROATIA (Dnevnik): (Satellite)
 2000 CHINA (Tai Yuan, CYRTV): (Satellite)
 2100 CHINA (Beijing) (CCTV): (Satellite)
 2130 IRAN (IRIB): (Tape)
 2200 KOREA (The Asia Network): (Satellite)
 2230 GREECE (Antenna TV S.A.): (Satellite)
 2300 FRANCE (France 2): (Satellite)
 2330 ITALY (RAI 1,2): (Satellite)

* Changed

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Audio 2 - World Radio Network Right Out	Mirrored at: http://lingnet.army.mil	or scola@creighton.edu